

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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IN RE: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE) MDL No. 1456
LITIGATION) Civil Action No. 01-CV-12257-PBS
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)
----- X
THIS DOCUMENT RELATES TO:) Hon. Patti B. Saris
International Union of Operating Engineers,)
Local No. 68 Welfare Fund v. AstraZeneca PLC)
et al. Civil Action No. 04-11503-PBS)
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**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT
DR. STANLEY C. HOPKINS' MOTION TO QUASH**

Defendant AstraZeneca Pharmaceuticals LP ("AstraZeneca") respectfully submits this Memorandum of Law in Opposition to Defendant Dr. Stanley C. Hopkins' Motion to Quash AstraZeneca's First Request for Production of Documents to Defendant Dr. Stanley C. Hopkins (the "Request," attached to the Declaration of Lucy Fowler ("Fowler Decl.") as Exhibit 1) and its subpoena ad testificandum and duces tecum to Dr. Hopkins' counsel, Jack E. Fernandez, Esq. (the "Subpoena," Fowler Decl. Exhibit 2).

INTRODUCTION

This Court's August 19, 2005 Memorandum and Order ("August 19 Order") ordered AstraZeneca to complete discovery on the claim of fraudulent joinder within sixty days of the date of the Order. August 19 Order at 4. Pursuant to the August 19 Order, AstraZeneca served document requests on defendant Dr. Hopkins and a subpoena for documents and testimony on his counsel, Mr. Fernandez, concerning the

EXHIBIT "4"

circumstances surrounding plaintiff's purported service of the summons and complaint on Mr. Fernandez and Dr. Hopkins' subsequent refusal to consent to removal. Specifically, AstraZeneca seeks discovery of any documents evidencing service on Dr. Hopkins as well as documents relating to communications between Dr. Hopkins or his counsel and plaintiff or its counsel.

This discovery is narrowly targeted to discover information on whether Dr. Hopkins accepted service of the complaint and refused to consent to removal as part of an agreement or understanding with plaintiff that plaintiff would not pursue its alleged claims against Dr. Hopkins. Access to such discovery is critical to AstraZeneca's ability to evaluate and demonstrate fraudulent joinder in this case. Indeed, Dr. Hopkins' and Mr. Fernandez's refusal to comply with the Request and the Subpoena, based in part on a purported "settlement privilege" under Rule 408 of the Federal Rules of Evidence, only serves to highlight that this discovery is not only appropriate, but essential. In contrast, none of the arguments advanced by Dr. Hopkins or his counsel justify their total refusal to comply with this properly issued discovery. Accordingly, the motion should be denied.

ARGUMENT

I. Federal Rule of Evidence 408 Does Not Preclude the Discovery Sought by the Request and Subpoena.

Dr. Hopkins and his counsel object to the discovery sought by AstraZeneca in the Request and Subpoena because such discovery purportedly requires the disclosure of information protected under the attorney-client privilege and the work product privilege. See Dr. Hopkins' Memorandum of Law in Support of His Motion to Quash ("Hopkins'

Mem.”) at 3. Such an objection, however, is not a valid ground to quash the Request and Subpoena in their entirety. If Dr. Hopkins or his counsel possess responsive documents that are indeed protected under the attorney-client or work product privileges, such documents should be withheld from production and described in a privilege log, as is provided for in both the Request and Subpoena. See Request at 3-4 (Fowler Decl. Exhibit 1); Subpoena at 4-5 (Fowler Decl. Exhibit 2). Similarly, if answering certain questions during a deposition would require Mr. Fernandez to reveal privileged information, he may invoke either the attorney-client privilege or work product privilege in declining to respond. AstraZeneca does not challenge Dr. Hopkins’ or Mr. Fernandez’s right to withhold information on the basis of either the attorney-client or work product privilege, but Dr. Hopkins and his counsel are still required to produce responsive documents and provide testimony that are not covered by these privileges.

Dr. Hopkins and his counsel also argue that the Request and Subpoena should be quashed because they “seek to have counsel produce evidence of settlement communications with Plaintiff’s counsel,” which they claim are protected by Federal Rule of Evidence 408. Hopkins Mem. at 2. Such an argument is without merit. To the extent that the Request and Subpoena seek documents and testimony evidencing “settlement communications” between plaintiff’s counsel and Dr. Hopkins or Mr. Fernandez, Federal Rule of Evidence 408 does not bar such discovery.

Rule 408 provides, in relevant part:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements

made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay

First, the documents and testimony sought by AstraZeneca in the Request and Subpoena fall outside of the scope of this rule. The rule does not prohibit the use of “compromise evidence if it is offered to prove something other than liability for or invalidity of a claim or its amount.” 23 Charles Alan Wright & Kenneth W. Graham, Jr., Federal Practice and Procedure: Evidence § 5310 (1980 & Supp. 2005). To the extent that AstraZeneca seeks information related to settlement discussions, it seeks such information in the context of the service and fraudulent joinder issues, not to prove or disprove the liability or invalidity of plaintiff’s claims.

Second, even if the requested documents and testimony fell within the ambit of Rule 408, courts have interpreted the rule to restrict only the *admissibility* – not the *discoverability* – of information concerning settlement discussions. See, e.g., In re Gen. Motors Corp. Engine Interchange Litig., 594 F.2d 1106, 1124 n.20 (7th Cir. 1979) (“Inquiry into the conduct of the [settlement] negotiations is also consistent with the letter and the spirit of Rule 408 of the Federal Rules of Evidence. That rule only governs admissibility.”); In re Subpoena Issued to Commodity Futures Trading, 370 F. Supp. 2d 201, 209-12 (D.D.C. 2005) (noting that a “substantial number of cases have rejected such a privilege,” and reaching the same result); Morse/Diesel, Inc. v. Fid. & Deposit Co. of Md., 122 F.R.D. 447, 449 (S.D.N.Y. 1988) (“[Rule 408] . . . only applies to the admissibility of evidence at trial and does not necessarily protect such evidence from discovery.”); see also Atchison Casting Corp. v. Marsh, Inc., 216 F.R.D. 225, 226-27 (D.

Mass. 2003) (accepting plaintiff's argument that courts can allow discovery of information related to confidential settlement agreements and holding that policies favoring liberal discovery outweighed plaintiff's claim of confidentiality).

Tellingly, Dr. Hopkins and Mr. Fernandez fail to cite any authority to support their contention that discovery of settlement communications is barred by Federal Rule of Evidence 408.

Accordingly, any responsive documents or testimony relating to settlement discussions between plaintiff's counsel and Dr. Hopkins or Mr. Fernandez is discoverable, and Dr. Hopkins and Mr. Fernandez cannot use Rule 408 as a "screen for curtailing [AstraZeneca's] right of discovery." In re Subpoena Issued to Commodity Futures Trading, 370 F. Supp. 2d at 208-09 (quoting 2 Weinstein's Federal Evidence § 408.07 (2005)).

II. Dr. Hopkins' Joinder in Plaintiff's Motion for Remand Cannot Serve as a Substitute for Discovery.

Dr. Hopkins and his counsel argue that the Request and Subpoena should also be quashed because Dr. Hopkins' Joinder in Plaintiff's Motion for Remand contains all of the necessary information concerning when and how Dr. Hopkins was served in this case. See Hopkins' Mem. at 2. Such a contention is mistaken. The only information concerning service contained in Dr. Hopkins' Joinder is that "[Mr. Fernandez] accepted service of the Class Action Complaint on behalf of his client, defendant, Stanley C. Hopkins, M.D., on July 3, 2003." Joinder of Defendant Stanley C. Hopkins, M.D., in Plaintiff's Motion for Remand, or, in the Alternative, Motion to Remand Pursuant to 28 U.S.C. § 1448 ("Hopkins Joinder") ¶ 3 (Fowler Decl. Exhibit 3). Such a paucity of facts

concerning the service of Dr. Hopkins is insufficient to evaluate and determine whether Dr. Hopkins was properly served under New Jersey law, see Citibank, N.A. v. Russo, 759 A.2d 865, 868 (N.J. Super. Ct. App. Div. 2000) (holding that service pursuant to Rule 4:4-4(c) is valid if “the defendant answers or otherwise appears in the action”), or whether Mr. Fernandez’s purported acceptance of service via mail – in lieu of personal service of the New Jersey complaint on his out-of-state client, as is preferred under New Jersey law, see N.J. Ct. R. 4:4-4(a) – was part of a larger agreement with plaintiff relating to consent to removal. Thus, additional discovery on this issue is needed.

CONCLUSION

For the reasons stated above, AstraZeneca respectfully requests that Dr. Hopkins’ and Mr. Fernandez’s Motion to Quash be denied.

Respectfully Submitted,

By: /s/ Lucy Fowler

DATED: October 11, 2005

Nicholas C. Theodorou (BBO #496730)
Lucy Fowler (BBO# 647929)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02110

D. Scott Wise
Michael Flynn
Kimberley Harris
DAVIS POLK & WARDWELL
450 Lexington Avenue
New York, NY 10017

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on October 11, 2005, a copy to Verilaw Technologies for posting and notification to all parties.

/s/ Lucy Fowler

Lucy Fowler

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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International Union of Operating Engineers,)
Local No. 68 Welfare Fund v. AstraZeneca PLC)
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**DECLARATION OF LUCY FOWLER IN SUPPORT OF ASTRAZENECA'S
MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT
DR. STANLEY C. HOPKINS' MOTION TO QUASH**

I, Lucy Fowler, hereby declare that:

1. I am an associate at Foley Hoag LLP, which serves as counsel to defendant AstraZeneca Pharmaceuticals LP in the above-captioned litigation.
2. This declaration is submitted in support of AstraZeneca's Memorandum of Law in Opposition to Defendant Dr. Stanley C. Hopkins' Motion to Quash.
3. Attached as Exhibit 1 is a true and correct copy of Defendant AstraZeneca's First Request for Production of Documents to Defendant Dr. Stanley C. Hopkins, dated September 16, 2005.
4. Attached as Exhibit 2 is a true and correct copy of Subpoena ad Testificandum and Duces Tecum issued to Jack E. Fernandez, Esq., dated September 16, 2005.

5. Attached as Exhibit 3 is a true and correct copy of Joinder of Defendant Stanley C. Hopkins, M.D., in Plaintiff's Motion for Remand, or, in the Alternative, Motion to Remand Pursuant to 28 U.S.C. § 1448, dated August 4, 2003.

By: /s/ Lucy Fowler

DATED: October 11, 2005
Boston, MA

Lucy Fowler (BBO# 647929)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02110

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on October 11, 2005, a copy to Verilaw Technologies for posting and notification to all parties.

/s/ Lucy Fowler
Lucy Fowler

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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**DEFENDANT ASTRAZENECA'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT DR. STANLEY C. HOPKINS**

Defendant AstraZeneca Pharmaceuticals LP ("AstraZeneca"), by its counsel,
hereby requests, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, that
Defendant Dr. Stanley C. Hopkins produce within thirty (30) days of service the
documents listed below.

DEFINITIONS

1. "You" or "your" means Defendant Dr. Stanley C. Hopkins, and any attorneys, and their employees, acting on your behalf.
2. "Plaintiff's Counsel" means the counsel of record for the plaintiff in the IUOE Action and other lawyers at the counsel of record's law firms who are familiar with the IUOE Action.
3. The "IUOE Action" means International Union of Operating Engineers, Local No. 68 Welfare Fund v. AstraZeneca PLC et al., Civil Action No. 04-11503-PBS

(D. Mass.). This action was originally filed in New Jersey Superior Court (Monmouth County) and was removed on July 3, 2003 to United States District Court for the District of New Jersey (Civil Action No. 03-3230 (SRC) (D.N.J.)). On December 3, 2003, the Joint Panel on Multidistrict Litigation transferred the case for coordinated and consolidated pretrial proceedings to the Average Wholesale Price ("AWP") Multidistrict Litigation (MDL No. 1456, Civil Action No. 01-CV-12257-PBS (D. Mass.)).

4. The term "Complaint" means the Class Action Complaint filed in connection with the IUOE Action in the Superior Court of New Jersey, Monmouth County, on or about June 30, 2003.

5. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request any information that might otherwise be construed to be outside its scope.

6. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, telephone records, message slips or their electronic equivalent, and electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

7. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

8. The term "person" is defined as any natural person or any business, legal, or governmental entity or association.

9. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

10. "Copy" or "Copies," when used in reference to a document, means any color or black-and-white reproduction of a document, regardless of whether the reproduction is made by means of carbon paper pressure, sensitive paper, photostat, xerography, or other means or process.

11. "Relating" means in any way concerning or referring to, consisting of, involving, regarding or connected with the subject matter of the request.

INSTRUCTIONS

1. Unless otherwise specifically stated, the requests below refer to the period of January 1, 2002 to the present.

2. The singular form of a noun or pronoun shall include within its meaning the plural form of the noun or pronoun and vice versa; the masculine form of a pronoun shall include within its meaning the feminine form of the pronoun and vice versa; and the use of any tense of any verb shall include within its meaning all other tenses of the verb.

3. Each request for production of documents extends to all documents in the possession, custody, or control of you or anyone acting on your behalf. A document is to be deemed in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you (a) own such document in whole or in part; (b) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (c) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (d) have, as a practical matter, been able to use, inspect, examine, or copy such document when you sought to do so.

4. If production is requested of a document that is no longer in your possession, custody, or control, your response should state when the document was most recently in your possession, custody, or control, how the document was disposed of, and the identity of the person, if any, presently in possession, custody, or control of such document. If the document has been destroyed, state the reason for its destruction.

5. Provide the following information for each document withheld on the grounds of privilege:

- (a) its date;
- (b) its title;
- (c) its author;
- (d) its addressee;
- (e) the specific privilege under which it is withheld;
- (f) its general subject matter; and
- (g) a description of it that you contend is adequate to support your contention

that it is privileged.

6. These requests for production of documents are continuing in nature pursuant to Rule 26 of the Federal Rules of Civil Procedure so as to require, whenever necessary, continuing production and supplementation of responses between the initial date for production set forth above and the time of trial.

7. The documents produced must be produced as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request.

8. To the extent that you consider any of the following requests for production of documents objectionable, please respond to the remainder of the production request, and separately state the part of each request to which you object and each ground for each objection.

DOCUMENTS TO BE PRODUCED

1. All documents concerning any communications between you and Plaintiff's Counsel, relating in any way, in whole or in part, to the IUOE Action, including notes of conversations with Plaintiff's Counsel in which the IUOE Action was discussed.
2. All documents concerning any communications between you and counsel for Defendant AstraZeneca Pharmaceuticals LP, relating in any way, in whole or in part, to the IUOE Action, including notes of conversations with counsel for AstraZeneca Pharmaceuticals LP in which the IUOE Action was discussed.
3. All documents concerning, reflecting, evidencing, or relating to the service of the summons and/or Complaint in the IUOE Action on you or the waiver of service by you or counsel acting on your behalf, including, but not limited to, proof of service, mailing, or shipping via Federal Express, or other courier records, receipts, correspondence, e-mails, or records of a similar kind.
4. All documents concerning any proposals or agreements with plaintiff herein or with Plaintiff's Counsel regarding you or the IUOE Action.

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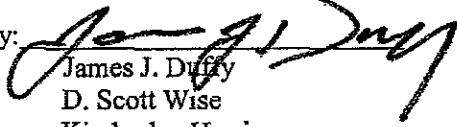
5. All documents concerning any communications between you and Plaintiff's Counsel with respect to communications or proposed communications with the Courts in which the IUOE Action is or has been pending.

Dated: September 16, 2005
New York, New York

Respectfully submitted,

DAVIS POLK & WARDWELL

By:


James J. Duffy
D. Scott Wise
Kimberley Harris
450 Lexington Avenue
New York, New York 10017

- and -

FOLEY HOAG LLP

Nicholas C. Theodorou
Lucy Fowler
155 Seaport Boulevard
Boston, MA 02110

Attorneys for AstraZeneca
Pharmaceuticals L.P.

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CERTIFICATE OF SERVICE

Docket No. MDL 1456

I, James J. Duffy, hereby certify that I am one of Defendant AstraZeneca's attorneys and that on September 16, 2005, I caused Defendant AstraZeneca's First Request For Production Of Documents To Defendant Dr. Stanley C. Hopkins, to be served on Dr. Hopkins' counsel, Jack Fernandez, Zuckerman, Spaeder LLP, 101 East Kennedy Boulevard, Suite 1200, Tampa, Florida 33602, via Federal Express overnight delivery. I further certify that the same was served on all counsel of record by causing the same to be posted electronically via Verilaw.

Dated: September 16, 2005



James J. Duffy

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EXHIBIT 2

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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NOTICE OF SUBPOENA
AD TESTIFICANDUM AND DUCES TECUM

PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, Defendant AstraZeneca Pharmaceuticals L.P. will serve a subpoena in the above-captioned action, a copy of which is attached hereto, requiring non-party witness, Jack Fernandez, Esq. (i) to appear to testify at a deposition on the 11th day of October, 2005, at 2:00 p.m. at the offices of Dreyer & Associates, 201 N. Franklin Street, Suite 1775, Tampa, Florida 33602, or at such other location, date, and time as may be agreed upon by counsel, and (ii) to produce documents responsive to the attached schedule of documents.

The deposition shall be taken before a notary public or other officer authorized by law to administer oaths, shall continue from day to day until completed and shall be recorded by stenographic means.

Case 1:01-cv-12257-PBS Document 1768-3 Filed 10/11/2005 Page 11 of 35

Dated: September 16, 2005
New York, New York

Respectfully submitted,

DAVIS POLK & WARDWELL

By:

James J. Duffy
D. Scott Wise
Kimberley Harris
450 Lexington Avenue
New York, New York 10017

- and -

FOLEY HOAG LLP

Nicholas C. Theodorou
Lucy Fowler
155 Seaport Boulevard
Boston, MA 02110

Attorneys for AstraZeneca
Pharmaceuticals L.P.

AO 88 (Rev. 1/94) Subpoena in a Civil Case

UNITED STATES DISTRICT COURT
Middle District of Florida

In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

SUBPOENA IN A CIVIL CASE
MDL NO. 1456

THIS DOCUMENT RELATES TO:
International Union of Operating Engineers,
Local No. 68 Welfare Fund v.
AstraZeneca PLC, et al.,
Civil Action No. 04-11503-PBS

Civil Action No. 01-12257-PBS

Judge Patti B. Saris
(case pending in D. Mass.)

TO: Jack Fernandez, Esq.
Zuckerman, Spaeder, LLP
101 E. Kennedy Blvd., Suite 1200
Tampa, Florida 33602

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Dreyer & Associates
201 N. Franklin St., Suite 1775
Tampa, Florida 33602

DATE AND TIME

October 11, 2005 at 2:00 p.m.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
See Schedule A, attached hereto.

PLACE

Same as above.

DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Attorney for Defendant AstraZeneca Pharmaceuticals LP

DATE

September 16, 2005

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: James J. Duffy, Davis Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017. (212) 450 4000.

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

AO 88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE		
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCHEDULE A

(Schedule of Documents to be Produced)

DEFINITIONS

1. "You" means Jack Fernandez, Esq. and other lawyers or employees of the firm Zuckerman, Spaeder, LLP.
2. "Plaintiff's Counsel" means the counsel of record for the plaintiff in the IUOE Action and other lawyers at the counsel of record's law firms who are familiar with the IUOE Action.
3. The "IUOE Action" means International Union of Operating Engineers, Local No. 68 Welfare Fund v. AstraZeneca PLC et al., Civil Action No. 04-11503-PBS (D. Mass.). This action was originally filed in New Jersey Superior Court (Monmouth County) and was removed on July 3, 2003 to United States District Court for the District of New Jersey (Civil Action No. 03-3230 (SRC) (D.N.J.)). On December 3, 2003, the Joint Panel on Multidistrict Litigation transferred the case for coordinated and consolidated pretrial proceedings to the Average Wholesale Price ("AWP") Multidistrict Litigation (MDL No. 1456, Civil Action No. 01-CV-12257-PBS (D. Mass.)).
4. The term "Complaint" means the Class Action Complaint filed in connection with the IUOE Action in the Superior Court of New Jersey, Monmouth County, on or about June 30, 2003.

5. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, telephone records, message slips or their electronic equivalent, and electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.
6. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
7. The term "person" is defined as any natural person or any business, legal, or governmental entity or association.
8. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

INSTRUCTIONS

1. The documents to be produced will be inspected and may be copied at the time specified in the subpoena. You will not be required to surrender original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production, or in the alternative you may deliver the copies to the attorney whose name appears on this subpoena.
2. You are subpoenaed by the attorney whose name appears on this subpoena and unless excused from your duties under the subpoena

by the attorney or the Court, you shall respond to this subpoena as directed under penalty of contempt of court.

3. Unless otherwise indicated, this request calls for production of all documents responsive to the request that are in your possession, custody or control. A document is in your possession, custody or control if you have actual possession or custody of the document or the right to obtain the document or a copy thereof from any other person that has actual physical possession thereof.
4. Documents should be produced in the manner in which they are maintained in the ordinary course of business. All documents that are physically attached to each other, whether stapled, clipped or otherwise fastened, shall be produced in that manner. Documents that are segregated from other documents, whether by inclusion in binders, files, sub-files or by the use of dividers, tabs or any other method, shall be produced in that form with the corresponding file name or label attached.
5. If any portion of a document is responsive to a request, the entire document should be produced.
6. If any document is withheld from production based upon an assertion of privilege, then, at the time of production, supply a log that provides with specificity for each document so withheld: (1) the type of document; (2) the author(s), addressee(s), and all recipients of the document; (3) the general subject matter of the

document; (4) the date of the document; (5) the privilege that you claim applies; (6) such other information as is sufficient to identify the document for a subpoena duces tecum or to enable the Court to make an in camera determination of any privilege.

7. If a portion of an otherwise responsive document contains information that you claim is subject to a claim of privilege, then such portions shall be redacted from the document, with such redacted material to be described in the same manner as set forth in the preceding instruction, and the rest of the document shall be produced.
8. Unless otherwise expressly stated, each request calls for all documents described, regardless of the time or date prepared, authored, generated, revised, sent, received or used, for any date beginning on January 1, 2002 to the present.
9. These requests are continuing in nature and shall require further and supplemental production if you or your agents receive, discover or create, at any time up to the date of final judgment in the above-referenced action, additional documents that fall within the scope of one or more of the requests herein.

DOCUMENTS REQUESTED

1. All documents concerning any communications between you and Plaintiff's Counsel, relating in any way, in whole or in part, to the IUOE Action or Dr. Stanley C. Hopkins, including notes of

conversations with Plaintiff's Counsel in which the IUOE Action was discussed.

2. All documents concerning any communications between you and counsel for Defendant AstraZeneca Pharmaceuticals LP, relating in any way, in whole or in part, to the IUOE Action or Dr. Stanley C. Hopkins, including notes of conversations with counsel for AstraZeneca Pharmaceuticals LP in which the IUOE Action was discussed.
3. All documents concerning, reflecting, evidencing, or relating to the service of the summons and/or Complaint in the IUOE Action on Dr. Stanley C. Hopkins or the waiver of service by Dr. Stanley C. Hopkins or counsel acting for Dr. Hopkins, including, but not limited to, proof of service, mailing, or shipping via Federal Express, or other courier records, receipts, correspondence, e-mails, or records of a similar kind.
4. All documents concerning any proposals or agreements with plaintiff herein or with Plaintiff's Counsel regarding Dr. Stanley C. Hopkins or the IUOE Action.
5. All documents concerning any communications between you and Plaintiff's Counsel with respect to communications or proposed communications with the Courts in which the IUOE Action is or has been pending.

EXHIBIT 3

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ASSOCIATE LOCAL COUNSEL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

International Union of Operating Engineers,
Local No. 58 Welfare Fund,

Plaintiff,

v.

AstraZeneca PLC; AstraZeneca Pharmaceuticals LP;
AstraZeneca LP; Zeneca, Inc.; TAP Pharmaceutical Products, Inc.; Abbott Laboratories; Taikeda Chemical Industries, Ltd.; Bayer AG; Bayer Corporation; Miles Laboratories, Inc.; Cutter Laboratories, Inc.; GlaxoSmithKline, P.L.C.; SmithKline Beecham Corporation; GSK Wellcome, Inc.; Pharmacia Corporation; Pharmacia & Upjohn, Inc.; Monsanto Company; G.D. Searle Company; Sanofi-Synthelabo Inc.; Johnson & Johnson; Alza Corporation; Centocor, Inc.; Ortho Biotech, Inc.; Alpha Therapeutic Corporation; Hoffman La-Roche Inc.; Amgen, Inc.; Immunex Corporation; Aventis Pharmaceuticals, Inc.; Aventis Behring L.L.C.; Hoechst Marion Roussel, Inc.; Centeon, L.L.C.; Amcor Pharmaceuticals; Baxter International Inc.; Baxter Healthcare Corporation; Immuno-U.S., Inc.; Boehringer Ingelheim Corporation; Ben Venue Laboratories, Inc.; Bedford Laboratories; Roche Laboratories, Inc.; Bristol-Myers Squibb Company; Oncology Therapeutics Network Corporation; Apothecom, Inc.; Dey, Inc.; Fujisawa Pharmaceutical Co., Ltd.; Fujisawa Healthcare, Inc.; Fujisawa USA, Inc.; Novartis International AG; Novartis Pharmaceutical Corporation; Sandoz Pharmaceutical Corporation; Schering-Plough Corporation; Warwick Pharmaceuticals Corporation;

C.A. NO. 03-3230 (SRC)

JOINDER OF DEFENDANT
STANLEY C. HOPKINS,
M.D., IN PLAINTIFF'S
MOTION FOR REMAND,
OR, IN THE
ALTERNATIVE, MOTION
TO REMAND PURSUANT
TO 28 U.S.C. § 1446

8/4/03

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Sear, Inc.; Genia Sior Pharmaceuticals, Inc.; Wyeth; Wyeth Pharmaceuticals; Saad Azzam, M.D.; Stanley C. Hopkins, M.D.; Robert A. Berkman, M.D.; Does 1-50; ABC Corp. 1-50; and XYZ Partnerships; and Associations 1-50,

Defendants.

**JOINDER OF DEFENDANT STANLEY C. HOPKINS, M.D., IN
PLAINTIFF'S MOTION FOR REMAND, OR, IN THE ALTERNATIVE,
MOTION TO REMAND PURSUANT TO 28 U.S.C. § 1448**

Defendant, Stanley C. Hopkins, M.D., by and through his undersigned counsel, hereby joins in the Plaintiff's Motion for Remand, or, in the alternative, moves this Honorable Court to remand this case to state court pursuant to 28 U.S.C. § 1448, and in support thereof avers as follows:

1. This Court's next motion day is September 2, 2003.
2. The Class Action Complaint in the instant case was filed on June 30, 2003, in the Superior Court of New Jersey, Monmouth County.
3. The undersigned accepted service of the Class Action Complaint on behalf of his client, defendant, Stanley C. Hopkins, M.D., on July 3, 2003.
4. Co-defendant, AstraZeneca Pharmaceuticals, L.P. ("AstraZeneca"), removed this action to this Court by filing a Notice of Removal on July 3, 2003.
5. On July 9, 2003, plaintiff filed a Motion for Remand, which was based, in part, upon the lack of consent by Dr. Hopkins.
6. Dr. Hopkins has not provided his consent to removal, although his consent was sought by counsel for AstraZeneca.
7. The undersigned clearly verbally communicated Dr. Hopkins' denial of consent to federal court jurisdiction to counsel for AstraZeneca, and to counsel for plaintiff.

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8. In view of Dr. Hopkins' lack of consent to federal court jurisdiction over this matter, the plaintiff's Motion for Remand should be granted.

9. In the alternative, should this Court deny the plaintiff's Motion for Remand, despite the lack of consent of Dr. Hopkins to federal court jurisdiction, Dr. Hopkins hereby seeks to have this case remanded pursuant to 28 U.S.C. § 1448 for the same reason.

10. Since defendant Stanley C. Hopkins, M.D., hereby joins in plaintiff's Motion for Remand and brief in support thereof, the filing of a separate brief in support of defendant's notice of joinder and, in the alternative, motion to remand, is unnecessary in this instance.

WHEREFORE, defendant, Stanley C. Hopkins, M.D., hereby joins in the plaintiff's Motion for Remand and respectfully requests that this Honorable Court remand the case to the Superior Court of New Jersey, Monmouth County, either on the basis of plaintiff's Motion for Remand or upon his own motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to all counsel of record on the attached service list by John J. Zuckerman this 4 day of August, 2003.

John J. Zuckerman
Attorney

Received 08/05/2003 12:09PM for KHARRIS. Image ID 00026779. Fax ID D153F2F9FB1388E. * Pg 9/19
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

International Union of Operating Engineers,
Local No. 68 Welfare Fund,

Plaintiff

v.

AstraZeneca PLC; AstraZeneca Pharmaceuticals LP;
AstraZeneca LP; Zeneca, Inc.; TAP Pharmaceutical Products,
Inc.; Abbott Laboratories; Takeda Chemical Industries, Ltd.;
Bayer AG; Bayer Corporation; Miles Laboratories, Inc.; Cutter
Laboratories, Inc.; GlaxoSmithKline, P.L.C.; SmithKline
Beckman Corporation; Glaxo Wellcome, Inc.; Pharmacia
Corporation; Pharmacia & Upjohn, Inc.; Monsanto Company;
G.D. Searle Company; Sanofi-Synthelab Inc.; Johnson &
Johnson; Alza Corporation; Centocor, Inc.; Ortho Biotech, Inc.;
Alpha Therapeutic Corporation; Hoffman La-Roche Inc.;
Amgen, Inc.; Immunex Corporation; Aventis Pharmaceuticals,
Inc.; Aventis Behring L.L.C.; Hoechst Marion Roussel, Inc.;
Centocor, L.L.C.; Amour Pharmaceuticals; Baxter International
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Boehringer Ingelheim Corporation; Beecham Laboratories,
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Myers Squibb Company; Oncology Therapeutics Network
Corporation; Apothecon, Inc.; Dey, Inc.; Fujisawa
Pharmaceutical Co., Ltd.; Fujisawa Healthcare, Inc.; Fujisawa
USA, Inc.; Novartis International AG; Novartis Pharmaceutical
Corporation; Sandoz Pharmaceutical Corporation; Schering-
Plough Corporation; Warwick Pharmaceuticals Corporation;

C.A. NO. 03-3230 (SRC)

LIMITED ENTRY OF
APPEARANCE

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Sicor, Inc.; Genrix Sicor Pharmaceuticals, Inc.; Wyeth; Wyeth Pharmaceuticals; Sand Antoni, M.D.; Stanley C. Hopkins, M.D.; Robert A. Beckman, M.D.; Does 1-50; ABC Corp. 1-50; and XYZ Partnerships; and Associations 1-50,

Defendants.

LIMITED ENTRY OF APPEARANCE

The firm of ZUCKERMAN SPAEDER, LLP, by and through its attorney, Jack E. Fernandez, hereby enters its limited appearance for Defendant Stanley C. Hopkins, M.D., in this action, for the limited purpose of contesting this court's jurisdiction over this matter.

RESPECTFULLY SUBMITTED this 4th day of August, 2003.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to all counsel of record on
the attached service list by telecopy this 4 day of August, 2003.

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